

San Francisco Bay Conservation and Development Commission

455 Golden Gate Avenue, Suite 10600, San Francisco, California 94102 tel 415 352 3600 fax 415 352 3606

BCDC Original

PERMIT NO. 1989.014.05

(Originally Issued on March 7, 1990, As
Amended Through May 2, 2016)

AMENDMENT NO. FIVE



SAN FRANCISCO BAY CONSERVATION
& DEVELOPMENT COMMISSION

City of San Leandro
Civic Center
835 East 14th Street
San Leandro, California 94577

ATTENTION: Keith R. Cooke, Director of Engineering and Transportation Department

Ladies and Gentlemen:

On March 1, 1990, the San Francisco Bay Conservation and Development Commission, by a vote of 18 affirmative, 0 negative, and 0 abstentions, approved the resolution pursuant to which the original permit had been issued. Moreover, on October 1, 1991, April 15, 1994, August 5, 1994, June 28, 2000, and May 2, 2016, pursuant to Commission Regulation Section 10822, the Executive Director approved Amendment Nos. One, Two, Three, ~~and Four~~, and Five, respectively, to which this amended permit is hereby issued.

I. Authorization

A. Authorized Project. Subject to the conditions stated below, the permittee is granted permission to do the following within the Commission's "bay" and "shoreline band" jurisdictions at the San Leandro Municipal Marina, ~~and~~ including the entire San Leandro Shoreline, starting in the north from Neptune Drive near Marina Boulevard, south to the Roberts Landing Area, located south of the Tony Lema Golf Course, to the and north bank of San Lorenzo Creek, and east to the Lewelling Boulevard western terminus traffic circle. In the City of San Leandro, Alameda County:

1. In the Bay:

a. Marina Facilities Replacement Project

- (1) Demolish and remove 292 wood berths covering 41,348 square feet of Bay surface area (original authorization);
- (2) Install 250 new, concrete berths and concrete pilings covering 67,534 square feet of Bay surface area (original authorization);
- (3) Maintenance dredge 51,000 cubic yards of material from the marina basin, and perform 6,700 cubic yards of new dredging from the area adjacent to the north and west dikes (original authorization);

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- (4) Replace 1,200 cubic yards of undersized riprap and earthen material with 1,200 cubic yards of 12-inch rock riprap over a 23,950-square-foot area along the north dike (original authorization);
 - (5) Berth a maximum of 15 live-aboard boats (original authorization);
 - (6) Install new utilities to serve the berths (original authorization);
 - (7) Stabilize the pile-supported harbormaster office by driving eight timber batter piles (original authorization);
 - (8) Relocate 15 channel markers to correspond more closely to the width of the navigation channel that leads to the marina (original authorization);
 - (9) Remove timber gangways at piers J, K L/M, N/O and P/Q, the Harbor-Master's office at Pier A, and the fuel dock of the west dike, and replace all but the fuel dock gangway with new aluminum gangways, with a net decrease of Bay fill of 54 square feet (Amendment One);
 - (10) Place and maintain approximately 2,900 square feet (230 cubic yards) of new riprap primarily along the southwest edge of Marina Park in Laguna Del Sol; the site is identified as "Work Area D" in Exhibit D (Amendment No. Four); and
 - (11) Maintain on an in-kind, as needed basis, until the year 2010, all existing facilities within the San Leandro Marina and shoreline as described in Item I.A. above, along the north, south, east and west dikes, including the replacement riprap authorized in Amendment No. Four (see Exhibits C, D, and E) (original authorization).
- b. **Shoreline Marshlands Enhancement Project (Water Circulation and Drainage Plan)**
- (1) Dredge approximately 2,585 cubic yards of material from Roberts Landing Slough and dispose the material outside the Commission's jurisdiction (Amendment Two);
 - (2) Extend Roberts Landing Slough to San Lorenzo Creek by dredging approximately 9,545 cubic yards of material and dispose the material outside the Commission's jurisdiction (Amendment Two);
 - (3) Install four 48-inch culverts with tidegates and associated shoreline protection in the North Marsh shoreline levee, covering approximately 1,150 square feet of Bay surface area (Amendment Two);

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- (4) Install one 24-inch culvert with a screw gate and associated shoreline protection in the southern levee of East Marsh, covering approximately 120 square feet of Bay surface area, and repair the existing tidegate along San Lorenzo Creek (Amendment Two);
- (5) Place approximately 2,900 square feet of rock riprap along a 420-foot length of shoreline to stabilize and protect the existing Bunker Marsh levee road (Amendment Two); and
- (6) Remove approximately 250 cubic yards of woody debris from Roberts Landing Slough (Amendment Two).

2. Within the 100-foot Shoreline Band:

a. Marina Facilities Replacement Project

- (1) Replace 400 cubic yards of undersized riprap and earthen material with 400 cubic yards of riprap over a 6,000-square-foot area along the north dike (original authorization);
- (2) Remove 13,975 square feet of asphalt pathway, and install a 10-foot-wide by 940-foot-long concrete pedestrian path along the north dike, and a 575-foot-long concrete path along the west dike, a portion of which is 9 feet wide and a portion 6.5 feet wide (original authorization);
- (3) Landscape and irrigate a 20,500-square-foot area (original authorization);
- (4) Install public access amenities including benches, drinking fountains, and bollard lights (original authorization); and
- (5) Replace and maintain on an in-kind, as needed basis, until the year 2010, all existing facilities within the San Leandro Marina and shoreline, as described in Item I.A. above, along the north, south, east and west dikes (original authorization).

b. Shoreline Marshlands Enhancement Project (Water Circulation and Drainage Plan)

- (1) Install four 48-inch culverts in the North Marsh levee, covering approximately 1,050 square feet (Amendment Two);
- (2) Install one 24-inch culvert in the East Marsh levee, covering approximately 215 square feet (Amendment Two);
- (3) Improve approximately 900 linear feet of levee on east side of Roberts Landing Slough, raising the levee elevation by 2 to 3 feet (Amendment Two);

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- (4) Excavate approximately 3,500 lineal feet of existing channel on the inboard side of the existing shoreline levees (Amendment Two);
- (5) Improve about 7,500 feet of the existing paved Shoreline Trail from Estudillo Canal south to the end of the existing paved trail near the south end of the North Marsh by removing timbers, clearing vegetation, and adding gravel on the levee top only (Amendment Two); and
- (6) Improve approximately 150 linear feet of the Bunker Marsh levee, to be used as a public access trail and for emergency vehicle access, by reconstructing the levee slopes through placing 75 square feet of earth on the north side and 120 square feet of earth on the south side of the existing levee, and grading and resurfacing the top of the levee (Amendment Two).
- (7) Install, use, and maintain "Public Shore", "Bay Trail", "Sensitive Habitat", "Dogs on Leash", and "Wildlife Protection" signage adjacent to the Overlook area shown on Exhibit B and along the Shoreline Trail, consistent with Special Condition II.F.3.i (Amendment Five).

B. Application Dates. This amended authority is generally pursuant to and limited by the original application received July 21, 1989, as amended by your letters dated September 27, 1989, May 22, 1991 and June 11, 1991, requesting Amendment No. One, your letter dated December 3, 1992, requesting Amendment No. Two, your letter dated July 11, 1994 requesting Amendment No. Three, ~~and~~ your letters dated July 17, 1999, December 20, 1999, and May 25, 2000, requesting Amendment No. Four, and your letters dated September 10, 2015 and January 28, 2016, requesting Amendment No. Five, including all accompanying plans, attachments and exhibits, and all subsequently submitted exhibits and plans, but subject to the modifications required by the conditions herein.

C. Deadlines for Commencing and Completing Authorized Work. Work authorized ~~herein~~ for the Marina Facilities Replacement Project ~~must was to~~ commence prior to January 1, 1991, and the work authorized ~~herein~~ for the Shoreline Marshlands Enhancement Project (Water Circulation and Drainage Plan) ~~must was to~~ commence prior to January 1, 1996, or this amended permit ~~will was to~~ lapse and become null and void. Such work for the Marina Facilities Replacement Project ~~must was~~ also to be diligently pursued to completion and ~~must be~~ completed by January 1, 1993, and similarly, such work for the Shoreline Marshlands Enhancement Project (Water Circulation and Drainage Plan) ~~must was to~~ be diligently pursued to completion and ~~must be~~ completed by December 31, 1997, unless an extension of time ~~is~~ was granted by a further amendment of the permit. The new riprap placement authorized ~~herein~~ under Amendment No. Four ~~must was to~~ commence prior to July 1, 2001 and ~~must was~~ to be diligently pursued to completion by July 1, 2003, unless an extension of time ~~is~~ was granted by further amendment of this amended permit. In-kind maintenance of the authorized

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facilities in the Marina Facilities Replacement Project ~~may~~ might have be performed until January 1, 2010, as authorized by Sections I.A.1.a.(10) and I.A.2.a.(5) of this amended permit. Work authorized by Amendment No. Five must commence prior to October 1, 2016 and must be diligently pursued to completion by August 1, 2017.

D. **Project Summary.** The Marina Facilities Replacement Project will result in a net increase in Bay fill of 26,132 square feet for new marina berths. Although the number of marina berths will decrease from 292 to 250, the new marina berths are larger, resulting in a greater area of pile-supported fill. The project includes a total of approximately 381,300-square-foot ~~will result in approximately 28,900 square feet of new~~ public access in the form of a permanently guaranteed pedestrian pathway and landscaping along the north and west dikes, and public shore parking spaces at Lewelling Boulevard Traffic Circle. The project, as amended in Amendment No. Two, ~~to~~ includes the Shoreline Marshlands Enhancement Project (Water Circulation and Drainage Plan), ~~will result that resulted in~~ a net increase in Bay fill of approximately 2,890 square feet, for the placement of culverts and shoreline protection within and along the existing shoreline levees, and the dredging of approximately 12,130 cubic yards of Bay muds, to enhance tidal water circulation on the inboard side of the shoreline levees for marsh habitat restoration. All dredged materials will be disposed of outside the Commission's jurisdiction. The project authorized in Amendment No. Two ~~will~~ also improved approximately 11,000 lineal feet of public access pathway, including a guaranteed north-south connection between the end of the existing paved shoreline trail and the footbridge at San Lorenzo Creek and a guaranteed east-west connection between the end of the existing, paved shoreline trail and Lewelling Boulevard. Amendment No. Four will result in an additional net increase in Bay fill of 2,900 square feet (230 cubic yards). Amendment No. Five will result in an increase of approximately 1,000-square-feet of dedicated public access and will provide enhanced public access to the Shoreline Marshlands and Robert's Landing Slough by providing six public shore parking spaces and enhanced bicycle and public access signage leading to the Shoreline Trail.

E. **Related Permit.** BCDC Permit No. 1992.057.01, originally issued to Citation Homes Central and assigned to Heron Bay HOA, has identical public access requirements for the Shoreline Marshlands and Roberts Landing Slough public access area, as shown on Exhibit B to this Permit.

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II. Special Conditions

The amended authorization made herein is subject to the following special conditions, in addition to the standard conditions in Part IV:

A. Specific Plans and Plan Review

1. **Plan Review.** No work shall be commenced pursuant to this amended permit until final precise site, grading, architectural, landscaping, and marsh restoration plans and any other relevant criteria, specifications, and plan information for that portion of the work have been submitted to, reviewed, and approved in writing by or on behalf of the Commission. The specific drawings and information required will be determined by the staff. To save time, preliminary drawings should be submitted and approved prior to final drawings.

The plans shall include and clearly label the mean high tide line or 5 feet above sea level in marshes the line 100 feet inland of the mean high tide line, property lines, the boundaries of all areas to be reserved and/or improved for public access purposes, grading, details showing the location, types, dimensions, and materials to be used for all structures, irrigation, landscaping, drainage, seating, parking, signs, lighting, fences, paths, trash containers, utilities and other proposed improvements.

Plans submitted shall be accompanied by a letter requesting plan approval, identifying the type of plans submitted, the portion of the project involved, and indicating whether the plans are final or preliminary. Approval or disapproval shall be based upon: (a) completeness and accuracy of the plans in showing the features required above, particularly the mean high tide line, property lines, and the line 100 feet inland of the mean high tide line, and any other criteria required by this amended permit; (b) consistency of the plans with the terms and conditions of this amended permit, particularly the requirements established to provide and improve physical public access; (c) the provision of the amount and quality of public access to and along the shoreline and in and through the project to the shoreline required by this amended permit; (d) consistency with legal instruments reserving public access and open space areas; (e) assuring that any fill in the Bay does not exceed this authorization and will consist of appropriate shoreline protection materials as determined by or on behalf of the Commission; and (f) consistency of the plans with the recommendations of the Design Review Board.

Plan review shall be completed by or on behalf of the Commission within 30 days after receipt of the plans to be reviewed.

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2. Original Permit and Amendments No. One through Four. The project authorized by the Original Permit and Amendments No. One through Four shall be consistent with the plans entitled, "Site and Landscaping Plans for Renovation at the San Leandro Marina, Sheets L-1 through L-11," prepared by Noble Consultants received in BCDC's office on April 12 and 27, 1990, and were approved by staff on May 11, 1990, in addition to plans required by BCDC Permit No. M1992.057.01, issued to Heron Bay HOA entitled "Roberts Landing Shoreline Trail Plan," prepared by Resource Management International, Inc., dated May 7, 1996, and approved by staff on May 13, 1996.

3. Amendment No. Five. The project authorized by Amendment No. Five shall be consistent with the plans entitled, "Site Plan and Details of Signage", Sheets One through Four, prepared by Phillip Toste, Assistant Engineer for City of San Leandro dated January 27, 2016.

2. 4. Conformity with Final Approved Plans. All work, improvements, and uses shall conform to the final approved plans. Prior to any use of the facilities authorized herein, the appropriate design professional(s) of record shall certify in writing that, through personal knowledge, the work covered by the amended permit has been performed in accordance with the approved design criteria and in substantial conformance with the approved plans. No noticeable changes shall be made thereafter to any final plans or to the exterior of any constructed structure, outside fixture, lighting, landscaping, signage, or parking area without first obtaining written approval of the change(s) by or on behalf of the Commission.

3. 5. Discrepancies Between Approved Plans and Special Conditions. In case of any discrepancy between final approved plans and special conditions of this amended permit or legal instruments approved pursuant to this amended permit, the special condition or the legal instrument shall prevail. The permittee is responsible for assuring that all plans accurately and fully reflect the special conditions of this amended permit and any legal Instruments submitted pursuant to this amended permit.

B. Marsh Restoration Work and Plans

1. **Marsh Restoration Work.** Prior to any use of the project the applicant shall undertake grading, Introduction of tidal action, planting of marsh plants and monitoring, all in accordance with a plan submitted to, reviewed by, and approved by or on behalf of the Commission.
2. **Restoration Plan.** Prior to the commencement of any work at any location pursuant to this authorization, the applicant shall submit a marsh restoration plan and program, to be approved by or on behalf of the Commission for the restoration and

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enhancement of the North Marsh, the Bunker Marsh, and the East Marsh located at Robert's Landing in San Leandro, Alameda County. The plan and program shall contain the following;

- a. **Site Conditions and Modifications.** A topographic map of the site in one-foot contours and a topographic map showing the proposed modifications. All elevations shall be relative to National Geodetic Vertical Datum (NGVD). The map shall include typical cross-sections showing proposed elevation of marsh plain, any channels, and any high spots. The map shall show figures for the ratios of typical horizontal to vertical slopes for existing and proposed levees, channels, and sloughs. The map shall show proposed plant species along the cross-sections according to their expected zone of growth. The map shall include or a separate map shall show the vicinity including storm drains, the elevation of adjacent surrounding properties, and the limit of the 100-year flood. The vicinity map shall include figures for the estimated tidal range related to Mean Higher High Water, Mean High Water, Mean Lower Low Water, Mean Sea Level, the maximum predicted tide, and the 100-year tide.
- b. **Tidal Culverts.** For any tidal culverts the program shall show calculations for determining the size of any culvert or pipe to be installed, including any tide control structure to be installed to control the amount of water entering at various tidal stages. The program shall indicate the amount of any cut and fill activities, the amount of material to be placed to strengthen the levee, and the expected tidal exchange. The expected tidal range shall indicate predicted expectations both inside and outside the culvert. If plants will be used to protect the levees around the culverts from erosion or undercutting, the program shall specify the type of plants to be used. If plants will not be used, the program shall describe how the culverts will be protected from erosion and undercutting. If any inlet-outlet structure is to be used, the program shall include a detailed drawing of such structure(s) with a schedule of operation, inspection and maintenance.
- c. **Soil and Water Information.** The program shall include a report identifying the type of soils found at the site and the soil type of any fill to be imported to the site. Information shall be provided on the quantitative soil measurements of salinity, pH, organic content, and bulk density. Information shall also be provided on the water, including water analysis of salinity, pH, biochemical oxygen demand (BOD), dissolved oxygen (DO), and, if appropriate, heavy metals.

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d. **Schedule.** The program shall include a schedule indicating when fill, dredging or grading will occur, the time to be allowed for settlement, the time when levee breaches or inlet structures will begin to function and the time when planting will occur. The program shall include an estimate of the extent of expected sedimentation over a ten-year period.

e. **Monitoring.** The permittee shall be responsible for monitoring the site for five years after the restoration project has been completed. Such monitoring shall include measuring the water quality, soil characteristics, plant survival and plant growth rates. Should adverse conditions be identified, the permittee shall take corrective action as specified by or on behalf of the Commission. Monitoring shall be carried out under the following five primary categories: hydrology/sedimentation, vegetation, salt marsh harvest mouse, and bird counts. In addition, tide heights shall be monitored and compared to modeled tide elevations to "fine tune" tide gate settings. The status of each of these monitoring categories shall be measured against performance criteria, and corrective actions, such as additional planting or re-grading, shall be carried out if performance criteria are not being met. Monitoring reports shall be submitted to the Army Corps of Engineers and the Commission annually. Monitoring procedures for the construction phase of the Shoreline Marshlands Restoration project are described on page nine of the November 1992 Addendum to the Water Circulation and Drainage Plan. Post-construction monitoring procedures and performance criteria are described on pages ten through fifteen of the Addendum.

3. **Responsibility for Flooding.** The permittee shall be solely and entirely responsible for any flooding that may occur inland of the marsh restoration site as a result of the improvements constructed as part of this permit. The permittee shall assure that the restoration plan meets the requirements of the agencies which have jurisdiction over the site and the surrounding area. The applicant shall provide a letter to the Commission indicating that the review has been done and that inland areas will not flood as a result of the work shown on the plan.

C. **Marsh Protection.** The work authorized by this permit shall be performed in a manner that will prevent any significant adverse impact on any tidal marsh or other sensitive wetland resources not otherwise authorized herein. If any unforeseen adverse impacts occur to any such areas as a result of the activities authorized herein, the permittee shall restore the area to its previous condition, including returning the disturbed area to its original elevation and soil composition and, if the area does not revegetate to its former condition within one year, the permittee shall seed all disturbed areas with appropriate marsh vegetation.

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D. Limit of Work. The improvements authorized herein for the Shoreline Marshlands Enhancement Project (Water Circulation and Drainage Plan) shall be generally built in conformance with the plan entitled "San Leandro Shoreline Marshlands Enhancement Project" prepared by Andrew J. Leahy for the City of San Leandro, as revised through February 21, 1994. The final project plans shall be submitted for BCDC review in accordance with Special Conditions II.A and II.B. above. The riprap shoreline protection at the Bunker Marsh levee road shall be generally built in conformance with the revised plans dated July 11, 1994, prepared by the City of San Leandro. The riprap shoreline protection authorized in Amendment No. Four shall be generally built in conformance with the revised plans dated May 25, 2000 and prepared by the City of San Leandro (see Exhibit E). No changes to the design of the project shall be made without the prior written approval of the BCDC staff.

E. Marsh Habitat Operations. The marsh habitat in the North Marsh, the Bunker Marsh and East Marsh shall be managed to provide high quality tidal wetlands consistent with the provisions of the 1992 Addendum to the Water Circulation and Drainage Plan. The marsh tide control structures shall be operated consistent with the recommendations of the 1992 Addendum to the Water Circulation and Drainage Plan, as may be modified as a result of recommendations stemming from the subsequent monitoring program included in the plan. No changes in the management of the marshes or the operations of the tidal culverts, which could possibly create adverse impacts to the value or function of the marsh habitats, shall be made without prior written approval by or on behalf of the Commission.

F. Public Access

1. Area Required by Original Permit As Modified by Amendment No. Five. An approximately 381,300-square-foot area shall be dedicated as public access and is comprised of three distinct areas:
 - a. The approximately 28,900-square-foot area, along approximately 1,500 feet of shoreline as generally shown on Exhibit "A" as "San Leandro Marina Required Public Access Area";
 - b. The approximately 351,400-square-foot area of Shoreline Marshlands and Roberts Landing Slough as generally shown on Exhibit "B" including, and the approximately 7,500 7,600-foot-long (approximately 254,200 square feet) existing Shoreline Trail segment between Neptune Drive Bridge at the Estudillo Canal Bridge and the southern end of the North Marsh (segment 1), the approximately 1,500 2,100-foot-long (approximately 46,600 square feet) segment of an existing Shoreline Trail that commences at a point approximately 350 feet east of Robert's Landing Slough Bridge and extends east to, and wraps around the inland end of Roberts Landing Slough the north shore of San Lorenzo Creek (segment 2), and the approximately 2,100 2,000-foot-long (approximately

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50,600 square feet) segment of existing Shoreline Trail informal pathway that extends between the southern end of segment 1 and the western terminus of privately owned and maintained Bayfront Drive between the Lewelling Boulevard extension south to San Lorenzo Creek (segment 3) (Amendment No. 5);

- c. The approximately 1,000-square-foot area within the Lewelling Boulevard Traffic Circle that shall be made available for public shore parking consistent with Special Condition II.F.3.i, as shown on Exhibit "B" and the plan entitled, "Site Plan and Details of Signage", Sheet Two, prepared by Phillip Toste, and dated January 27, 2016 and attached to the January 28, 2016 request for Amendment No. Five to the Permit (Amendment No. 5), and a portion of the Lewelling Boulevard Extension from Robert's Landing Slough east past the railroad tracks to the City's public street (segment 4), as generally shown on Exhibit "B" as "San Leandro Shoreline Marshlands Required Public Access Area",
 - d. The public access area shall be made available exclusively to the public for unrestricted public access for walking, sitting, bicycling, viewing, picnicking, parking, and related purposes. If the permittee wish to use the public access area for other than public access purposes, prior written approval by or on behalf of the Commission must be obtained.
2. **Permanent Guarantee.** Within 180 days of the date of this amended permit, no later than November 1, 2016, the permittee shall submit to counsel for the Commission, by an instrument or instruments acceptable to counsel for the Commission, to dedicate to a public agency or otherwise permanently guarantee such rights for the public to the public access area(s) required by Special Conditions II-F-1 to the extent the permittee is legally able to do so. The instrument(s) shall create exclusive rights in favor of the public which shall commence no later than after completion of construction of any public access improvements required by this permit and prior to the use of the facilities authorized herein. Such instrument(s) shall be in a form that meets recordation requirements of Alameda County and shall include a legal description of the property being restricted for public access, the legal description of the property and of the areas being restricted for public access, other appropriate landmarks and topographic features of the site, and the location of the nearest public street and adjacent public access areas. Approval or disapproval of the instrument(s) shall occur within 30 days after submittal for approval and shall be based on the following:
 - a. Sufficiency of the instrument(s) to create legally enforceable rights and duties to provide the public access areas required by this permit;

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- b. Inclusion of an exhibit to the instrument(s) that clearly shows the areas to be reserved with a legally sufficient description of the boundaries of such areas; and
- c. Sufficiency of the instrument(s) to create legal rights in favor of the public for exclusive public access that will run with the land and be binding on any subsequent lessees, licensees, and users.

~~Within 30 days after approval of the instrument(s) and prior to submittal of plans for plan review pursuant to Special Condition II-A,~~ the permittee shall record the instrument(s) with Alameda County and shall provide evidence of recording to the Commission within 30 days after recordation. No changes shall be made to the instrument(s) after approval without the express written consent by or on behalf of the Commission.

- 3. **Public Access Improvements.** The original permit required the public access to be made available ~~W~~ within 180 days of the completion of the construction of the marsh restoration activities authorized in this amended permit, or by December 31, 1997, whichever is was earlier, the permittee shall install the following improvements: ~~in conformance with approved plans to be submitted for the review and approval by or on behalf of the Commission pursuant to Special Conditions II-A:~~
 - a. An approximately 1,515-foot-long concrete pedestrian pathway, 10 feet wide along the north dike, and between 6.5 and 9 feet wide along the west dike. The pathway shall connect to an existing sidewalk around the restaurant at the northwest corner of the marina;
 - b. Approximately 20,500 square feet of landscaping along the pathway required by Special Condition II.F.3.a., above, including a strip bayward of the pathway, and planter boxes adjacent to the restroom facilities on the north and west dikes and at the pier entrances on the north dike;
 - c. A landscape irrigation system;
 - d. Public access amenities including a minimum of six benches, twelve concrete seatwalls, four drinking fountains, and fifteen bollard lights, the location of which are subject to plan review under Special Condition II-A of this permit; and
 - e. At least two public access signs; one prominently located at the entrance to the marina on Neptune Drive, and one prominently located along the pedestrian pathway required by this permit. The exact locations shall be approved pursuant to Special Condition II-A;
 - f. Along the approximately ~~7,500~~ 7,600 foot segment of the existing Shoreline Trail (segment 1), remove existing timber bollards within the asphalt trail along the east edge of the asphalt pavement, clear weedy vegetation within the combined

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asphalt trail and gravel shoulders, and place additional gravel on the maintenance road adjacent to the asphalt-covered portion of the trail to bring the entire trail to a uniform elevation across the width of the trail. Existing vegetation on the interior and exterior levee slopes along this length of trail shall be preserved.

- g. Beginning at the southern end of segment 1 of the Shoreline Trail, thence south and east approximately ~~1,500~~ 2,000 feet, to and around the inland end of Roberts Landing Slough (segment ~~2~~ 3), widen and repair the levee at the point where the trail turns inland, clear the trail area of weedy vegetation, grade and widen the levee trail, and construct a 14-foot-wide, all weather, public access trail. ~~In the event that a more desirable alternative alignment is available for the portion of the trail which wraps around the north end of Roberts Landing Slough, such as the repair and improvement of the existing dilapidated bridge over the slough, the location of the trail may be modified upon prior written approval from BCD staff.~~
- h. Along the approximately 2,100 foot segment of existing Shoreline Trail informal pathway that extends between a point approximately 350 feet east of Robert's Landing Slough Bridge ~~the Lewelling Boulevard extension~~ south to San Lorenzo Creek (segment ~~3~~ 2), clear and grade a 14-foot-wide public access trail and construct a ramp up to the San Lorenzo Creek levee.
- i. By April 1, 2017, and consistent with the plan entitled, "Site Plan and Details of Signage", Sheets One through Four, by Phillip Toste, dated January 27, 2016, submitted with the Fifth Amendment Request dated January 28, 2016, install, use, and maintain:
 - a. "Public Shore", "Bay Trail", "Sensitive Habitat", "dog on leash", and "wildlife protection" signage adjacent to the Overlook area along the Shoreline Trail;
 - b. Six four-hour public shore parking spaces (one ADA accessible and five standard spaces) around the Lewelling Boulevard Western Terminus Traffic Circle;
 - c. Public Shore, Public Shore parking, and Class II bikeway signage at the Lewelling Traffic Circle, and way-finding signage to and from Lewelling (Amendment Five).
- 4. ~~Future Public Access Improvements. If Citation Homes, Inc., the owners of the proposed residential development east and adjacent to the Shoreline Marshlands Enhancement Project (Water Circulation and Drainage Plan), have not agreed, within 180 days of the date of this amended permit in terms acceptable to the Commission,~~

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~~to construct a handicap accessible, pedestrian and bicycle path along the routes identified in this amended permit as segment 2, segment 3, and segment 4, the permittee shall seek to secure funding (from Citation Homes, Inc., other private or public funding sources, or from public agency grants) to construct the necessary improvements as described below. If the permittee has not demonstrated to BCDC that it has adequately secured the appropriate funding for the needed improvements as described below by December 31, 1996, the permittee shall bear the costs of the improvements, and in either event, the following improvements shall be installed by no later than December 31, 1997, in conformance with approved plans to be submitted for the review and approval by or on behalf of the Commission pursuant to Special Conditions II A:~~

- ~~a. Along the east-west portion of the public access path, from the shoreline east past Roberts Landing Slough (segment 2), as described in Special Condition II.F.3.g. above, construct a 12-foot wide, handicap accessible, pedestrian and bicycle path, with an 8-foot wide, asphalt, primary use area and a 2-foot wide shoulder on each side;~~
- ~~b. In the general location of the of informal pathway that extends between the Lewelling Boulevard extension south to San Lorenzo Creek (segment 3), construct a 12-foot wide, handicap accessible, pedestrian and bicycle path, with a 8-foot wide, asphalt, primary use area and a 2-foot wide shoulder on each side, including a ramp up to the San Lorenzo Creek levee; and,~~
- ~~c. Along a portion of the Lewelling Boulevard extension from Roberts Landing Slough east past the railroad tracks to the existing, paved portion of Lewelling Boulevard (segment 4), construct a 12-foot wide, handicap accessible, pedestrian and bicycle path, with an 8-foot wide, asphalt, primary use area and a 2-foot wide shoulder on each side (Removed as part of Amendment No. Five).~~

5.4. Maintenance.

a. Marina, Trail Segment 1, and Lewelling Boulevard Traffic Circle

All areas and improvements required by Special Condition II.F.3 and located in the Marina, Trail Segment 1 and the Lewelling Boulevard Traffic Circle, and Special Condition II.F.4, including walkways, signs, benches, landscaping, parking spaces, drinking fountains, lighting and trash containers, shall be permanently maintained by, and at the expense of, the permittee, and assignees, sublessees, or other successors in interest of the project. Maintenance shall include, but not be limited to, repairs to all hardscape surfaces, replacement of any trees or other plant materials that die or become unkept; repairs or replacement as needed of the signs, benches, drinking fountains, trash containers, and lights; periodic

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clean-up of litter and other materials deposited within the access areas; and ensuring that the public access signs remain in place and visible. Within 10 days after notification by staff of the Commission, the permittee or any successor or assignee shall correct any maintenance deficiency noted by the staff (Original Permit and modified by Amendment No. Five).

b. Trail Segments 2 and 3

For so long as Resolution No. 96-56 adopted by City and Heron Bay HOA on April 15, 1996 remains in effect, the Heron Bay HOA is responsible for the maintenance of Trail Segments 2 and 3. In the absence of the Resolution, the responsibility shall revert back to City. In both cases, maintenance must be consistent with Special Condition II.F.4.a. Additionally, BCDC Permit No. M1992.057.01, issued to Heron Bay HOA, requires the HOA to uphold certain and specific maintenance obligations for Segments 2 and 3 that include construct, use, and maintain a 12-foot-wide, handicapped accessible, pedestrian and bicycle path, with an 8-foot-wide asphalt center, including a ramp up to the San Lorenzo Creek levee for Segment 2 (Amendment No. Five).

6-5. Reasonable Rules on Use of Public Access Areas. The permittee may impose reasonable rules on the use of the areas required to be provided for public access provided such rules are first approved by or on behalf of the Commission and do not significantly affect the public nature of the area nor unreasonably burden public use. Rules may include restricting hours of use and delineating appropriate behavior.

G. Live-Aboard Boats. The permittee shall keep on file at the Harbormaster Office, a specific map showing the locations for all live-aboard boats at the marina. The map shall be kept up-to-date, and shall be made available to the Commission and the Commission staff upon request. No more than 15 live-aboards shall be moored at the marina at one time. The boats shall be located throughout the marina, with no more than two live-aboards per dock, to facilitate their purpose of providing added security for the marina.

H. Design and Construction. The construction and design standards for marina berths and associated facilities shall at least equal those established by the California Department of Boating and Waterways. Deviations from those standards may be approved by or on behalf of the Commission if the permittee can demonstrate that these facilities can be safely designed and easily maintained if constructed to lesser standards. All construction activity shall be performed to minimize turbidity and to prevent any pollution or navigation hazard.

I. Waste Discharge. In accord with applicable state and federal requirements, the discharge of any solid or liquid wastes, including sewage, oily bilge water, and other petroleum-based wastes, into the Bay within the marina basin is prohibited.

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J. Waste Oil Disposal and Pumpout Stations. Prior to the use of any berth, the permittee shall install at least one suitable facility, consistent with the U.S. Coast Guard's design and construction standards, for receiving and disposing of oily bilge water and other petroleum-based wastes. Such waste facility shall be maintained by the permittee in a safe, sanitary and operable condition. The permittee shall also maintain in a safe, sanitary and operable condition the two existing sewage pumpout stations, located immediately adjacent to the fuel dock at the harbor entrance. The pumpout facilities and the waste oil disposal facility shall be made available to boaters every day during normal boating hours. Use of the waste facilities shall either be free of charge or subject to a reasonable fee, imposed solely to cover the cost of the installation, maintenance and operation of the facilities. These waste facilities shall be clearly identified and located so that they can be easily seen and can be conveniently and safely reached by most boats in the water at all stages of the tide.

K. Enforcement Responsibility. The permittee shall adequately enforce the requirements herein, and shall submit to the Commission the name, address, and telephone number of the person at the marina responsible for such enforcement.

L. Restrooms, Showers and Garbage Disposal Facilities. The existing restrooms, showers, and garbage disposal facilities located in the marina shall be maintained in a safe and sanitary condition for marina users and their guests. All restroom facilities shall be available free of charge, conveniently located and open to marina users and their guests at all times. At least two restroom facilities shall be open to the public during daylight hours, or longer at the discretion of the permittee. Should public use become a nuisance due to vandalism or inappropriate activities, the permittee may apply to the Commission upon a finding that (1) a public nuisance exists that has been identified and fully substantiated, (2) the further restriction or closure would likely correct the specific problems identified, and (3) no reasonable alternative measures exist that would impose less restriction on the public's use of the restroom facilities.

M. Riprap Material and Placement

- 1. Riprap Material.** Riprap material shall be either quarry rock or specially cast or carefully selected concrete pieces free of reinforcing steel or other extraneous material and conforming to quality requirements for specific gravity, absorption, and durability specified by the California Department of Transportation or the U.S. Army Corps of Engineers. The material shall be generally spheroid-shaped. The overall thickness of the slope protection shall be no more than three feet measured perpendicular to the slope. Use of dirt, small concrete rubble, concrete pieces with exposed rebar, large and odd-shaped pieces of concrete, and asphalt concrete as riprap is prohibited.

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2. **Riprap Placement.** Riprap material shall be placed so that a permanent shoreline with a minimum amount of fill is established by means of an engineered slope not steeper than two (horizontal) to one (vertical). The slope shall be created by the placement of a filter layer protected by riprap material of sufficient size to withstand wind and wave generated forces at the site. The existing riprap and slope shall be excavated and removed so that the placement of the new riprap results in no net increase in fill.
3. **Riprap Maintenance.** The riprap authorized herein shall be regularly maintained by, and at the expense of the permittee, any assignee, lessee, sublessee, or other successor in interest to the project. Maintenance shall include, but not be limited to, collecting any riprap materials that become dislodged and repositioning them in appropriate locations within the riprap covered areas, replacing in-kind riprap material that is lost, repairing the required filter fabric as needed, and removing debris that collects on top of the riprap. Within 30 days after notification by the staff of the Commission, the permittee or any successor or assignee shall correct any maintenance deficiency noted by the staff.

N. Dredging and Work Within Water Areas.

1. **Time Limit for Dredging.** The approximately 12,130 cubic yards or less of new dredging authorized by this amended permit shall be completed prior to December 31, 1997. In addition, to minimize construction impacts on the California Least Tern, no dredging shall take place during the least tern restrictive period as defined by the U.S. Fish and Wildlife Service (July 1 through August 31) of any year. No further dredging is authorized by this amended permit.
2. **Water Quality Certification.** Prior to the commencement of any work within the Bay or other wetland area authorized herein, the permittee shall obtain a water quality certification, a waiver of water quality certification, or some other form of documentation which indicates review and approval, from the California Regional Water Quality Control Board, San Francisco Bay Region, for that work.

O. Debris Removal. Upon completion of construction, all construction debris shall be removed to a location outside the jurisdiction of the Commission. In the event that any such material is placed in any area within the Commission's jurisdiction, the permittee, its assigns or successors in interest, or the owner of the improvements, shall remove such material, at their expense, within ten days after it has been notified by the Executive Director of such placement.

P. Construction Operations. All construction operations shall be performed to prevent construction materials from falling into the Bay. In the event that such material escapes or is placed in an area subject to tidal action of the Bay, the permittee shall immediately retrieve and remove such material at its expense.

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Q. Recording. The permittee shall record this document or a notice specifically referring to ~~this document~~ amended permit with Alameda County within 30 days after execution of the amended permit issued pursuant to this authorization and shall, within 30 days after recordation, provide evidence of recordation to the Commission.

R. Permit Assignment. Prior to entering into any agreement to sell or otherwise transfer any interest in the property to another party, the permittee shall provide the party with a copy of this permit and shall call attention especially to the provisions regarding public access. The transferee shall agree in a written statement to the effect that he or she has read and understood the conditions of the permit and agrees to be bound by all terms and conditions hereof.

III. Findings and Declarations

This amended permit is issued on the basis of the Commission's findings and declaration that the authorized work is consistent with the McAteer-Petris Act, the San Francisco Bay Plan, the California Environmental Quality Act, and the Commission's amended coastal management program for San Francisco Bay for the following reasons:

A. Use. *San Francisco Bay Plan* Map No. 5 does not designate the Marina Facilities Replacement Project site for any priority use. The project consists of the rehabilitation of an existing marina, which is a water-oriented use for which fill in the Bay is permitted. The Commission finds that the use of this site as a marina is consistent with the use requirements of the Bay Plan and the McAteer-Petris Act.

However, *San Francisco Bay Plan* Map No. 5 designates the shoreline portions of the Roberts Landing site as a Waterfront Beach-Park Priority Land Use Area. The existing site contains a network of informal trails which traverse the site and connect to established public access trails. Existing recreational uses at the site generally include walking, biking, fishing, birding and illegal off-road vehicle use. The primary purpose of the project is to enhance the marshlands to provide higher quality habitat for the wildlife that exists there and, therefore, the project will control the public access and recreational opportunities at the site to ensure they are compatible with the wildlife habitat at the site. The *San Francisco Bay Plan* policies on recreation state, in part, that shoreside parks should emphasize hiking, bicycling, viewpoints, beaches and fishing facilities, and, that where open areas include ecological reserves, access should be provided to the extent that such access does not excessively disturb the natural habitat. With the exception of off-road vehicle use which is prohibited by the City of San Leandro ordinance, the project will maintain the existing public recreational opportunities at the site. Further, as conditioned, the improved public access paths will enhance some of the recreational opportunities by providing all-weather trails, handicap access, and improved connections to the existing public access trails, while at the same time protecting the site's wildlife resources by routing the trail to minimize excessive disturbance to the natural habitat.

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Views available at the site will be enhanced as the project will modify currently degraded areas and restore them to marshlands. The project will also result in higher quality wildlife habitat which will likely improve fishing and bird watching at the site. Therefore, the Commission finds that, as conditioned, the use of the site as a marsh area which includes public access to and along the shoreline, and which provides for public recreational opportunities as identified in the *San Francisco Bay Plan* policies on recreation, the project is consistent with the Waterfront Beach-Park Priority Land Use Area designation and the McActeer-Petris Act.

B. Public Access For Original Permit Through Amendment No. Four. The Bay Plan Policies on Public Access require that maximum feasible public access be provided, consistent with a project, in conjunction with new development in the Bay and on the shoreline. Because the Marina Facilities Replacement Project site is an existing municipal marina, the public currently has access at the site. There is ample public parking, restrooms, and an asphalt path that extends along all four sides of the marina. Landscaping is minimal.

The Marina Facilities Replacement Project will upgrade the existing marina, and could potentially attract the public to the shoreline, creating a demand for enhanced public access. To meet this demand, the permittee will both enhance the existing public access on the shoreline of the north and west dikes, and provide a permanent guarantee of public access to these areas. The other portions of the site are not considered part of this project, and will not be improved for public access.

To enhance existing public access, the permittee will replace the asphalt path with either concrete or pavers, add small plaza/off-loading areas at the entrance to each new marina dock, install planter boxes with shade trees, landscape the edge of the pathway near the top of the riprap, and provide drinking fountains and other amenities along the pathway. Special Condition II.F requires that the public access area including the pathways and landscaping be permanently guaranteed as public access, that the new pathways, benches, drinking fountains, bollard lights, and signs, be installed, and that the public access facilities be maintained by the permittee.

The Commission's Design Review Board evaluated the Marina Facilities Replacement Project on October 22, 1989, and again on November 6, 1989. At the meeting of October 22, 1989, the Board indicated that the plans submitted were insufficient to allow an adequate review of the public access, and requested that the permittee come for a second review with additional plans. The permittee prepared additional plans and returned to the Board on November 6, 1989. At that meeting, the Board stated that the public access improvements proposed as part of the upgrade of the marina berths would provide the maximum feasible public access consistent with the project.

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Public access at Roberts Landing is currently available through a combination of an improved shoreline trail, a series of unimproved levee trails, and a network of informal trails throughout the site. This combination of trails form the north-south connection of the Bay Trail, and also allows point access to the site from other locations including Lewelling Boulevard and Bayfront Drive to the East. The development of the Shoreline Marshlands Enhancement Project (Water Circulation and Drainage Plan) will effectively remove the informal trails in the marsh areas, and restrict public access to certain levees only, thereby creating an adverse impact to the existing public access at the site. However, to offset this impact, the applicant will create a public access path which will utilize existing trails where possible to maintain the north-south and eastern public access at the site connections. The public access improvements include improving the existing ~~7,500~~ 7,600 lineal feet of shoreline trail at the north end of the site, improving a portion of the eastern extension of the path to Bayfront Drive and Lewelling Boulevard, and creating a path south to connect to the San Lorenzo Creek levee, as generally shown in Exhibit B.

The loss of the seemingly unrestricted public access at the site as a result of the development of the project is considered significant. The existing public access at Roberts landing allows the public to explore the shoreline and the adjacent marshes, and traverse through the site in a random fashion. This type of access allows for a unique opportunity to access virtually any portion of the site to fish, bird watch, walk and even bike. Therefore, it is imperative that the proposed public access areas and improvements are implemented in their entirety because then, and only then, will the loss of the existing public access opportunities be sufficiently offset. The Commission understands that the new public access plan will not cover as large an area for public access as that currently, and that unrestricted public access in marsh areas adversely affect sensitive fish and wildlife resources. Therefore, the Commission finds that only when the new public access maintains, guarantees, and improves the north-south and east-west trail connections that exist on and through the site, does the project provide maximum feasible public access consistent with the project. The Commission also recognizes the complexity of implementing the public access elements required herein due to the ownership patterns of the site, thus Special Condition II.F.4. allows a reasonable period of time, until December 31, 1997, to implement the required improvements. A further reasonable extension of time for the implementation of the public access could be granted by or on behalf of the Commission if the Commission finds a reasonable extension of time is warranted due to unforeseen circumstances, provided that the permittee has sufficiently demonstrated its diligence in pursuing the public access improvements. The Commission further finds that all elements contained in Special Condition II.F. are necessary to ensure that these areas are reserved for the benefit of public access, and also to ensure that the public access improvements will be constructed to provide an all weather, handicap access, public access trail to and through the site and along the shoreline of San Francisco Bay.

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Amendment Five. This amendment is being issued to resolve BCDC Enforcement Case No. ER2014.016.

The enforcement case was opened as a result of the permittee's failure to comply with Special Condition II.F.2, which required the public access at Robert's Landing to have been permanently guaranteed to the public by September 7, 1990. As part of this amendment, the permittee has agreed to complete the permanent guarantee within 180 days of issuance of the amended permit, no later than November 1, 2016. Additionally, in lieu of paying administrative fines, the permittee has agreed to provide new public access amenities including:

1. Six public access parking spaces at the Lewelling Boulevard traffic circle, one of which is ADA accessible. This new public shore parking is located outside of the Commission's shoreline band jurisdiction and will enable the public to reach Segments 1, 2, and 3 of the Shoreline Trail required herein by walking or cycling along the section of the Shoreline Trail on Bayfront Drive required by BCDC Permit No. M1992.057.01, issued to the Heron Bay HOA; and
2. A comprehensive signage plan that clearly directs the public to the Shoreline Trails from Wicks Boulevard and Lewelling Drive in the east. The signage plan is also designed to identify bike lanes and notify the public of all the onsite access amenities. Further, the permittee has provided an updated Exhibit B to the permit that shows the San Leandro Marshlands' required public access area, including Shoreline Trail Segments 1, 2, and 3, as well as the public shore parking area at Lewelling Boulevard traffic circle.

San Francisco Bay Plan Public Access Policy 7 states, in relevant part, that public access improvements should be designed and built to encourage movement to the shoreline and that all improvements should be identified with appropriate signs. Public Access Policy 9 states, in relevant part, that access to the waterfront should be provided by walkways, trails and other appropriate means and connect to the nearest public thoroughfare where convenient parking or public transportation may be available.

The new public shore parking spaces will increase the opportunity for the residents of the City – and not just the residents of the Heron Bay HOA - to use and enjoy the public access required herein because the only other location for the public to park and gain access to this section of shoreline is at the City's marina, which is located several miles to the northwest. This parking enables access to the shoreline by providing convenient parking near the intersection of Wicks and Lewelling Boulevards, one of the City's vehicular thoroughfares. There is no location within the shoreline band that can accommodate public shore parking and the SF Bay Plan provides for requiring the continuance of public access amenities beyond the shoreline

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band to a logical end point, such as a public road, in this case the Lewelling Boulevard Traffic Circle. The public shore parking and the existing public access areas will be readily identifiable with adequate and appropriately sited and designed public shore and public shore parking signage.

BCDC staff is working with the Heron Bay HOA to resolve a violation of its permit that includes the failure to permanently guarantee the required public access areas and the failure to construct all of the required public access improvements as required by the permit. At such time that staff issues the amendment to the Heron Bay HOA's permit, it plans to similarly update that permit to eliminate the public access requirements that are located on the City of San Leandro's property, which is not owned or controlled by the Heron Bay HOA.

At the time of issuance of the original permit in 1990, no residential development existed in the now developed areas shown on Exhibit B located east of the section of trail called Segment Two and north of Bayfront Drive and the Lewelling Boulevard traffic circle. However, residential development was anticipated by the City of San Leandro and authorized just three years later in 1994 by the issuance of BCDC Permit No. M1992.057 to a developer known as Citation Homes, who had purchased the land where the homes are now built. Permit No. M1992.057 has since been assigned from Citation Homes to the Heron Bay HOA, the current owner.

BCDC Permit No. M1992.057.01 did not require any new public access not already required in this permit; in fact, the permit for the residential development duplicated word for word the public access requirements of the City's permit. Both permits also had identical public access exhibits.

The issuance of Amendment No. Five provides an opportunity to update the City's permit to reflect the public access requirements that it retains, omit the public access requirements that have been assumed by the Heron Bay HOA by virtue of each party's respective ownership interest and correct an error in the required public access area.

The project authorized in Amendment No. Five involves extending the deadline for the permittees to comply with Special Condition II.F.2, requires additional public access amenities in Special Condition II.F.3, and clarifies the permittee's maintenance obligations in Special Condition II.F.4. As defined in Regulation Sections 10601(e)(3) and 10601(b)(1), Amendment Five involves activities that place small amounts of inert inorganic fill that has no greater adverse impact on the Bay than the original project or no significant adverse effect on maximum feasible public access to the Bay but in the alternative, enhances public access to the Bay along the San Leandro Shoreline by providing public shore parking and signage. Therefore,

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the activities authorized and required by this amendment satisfy the definition of "minor repairs or improvements" for which the Executive Director may issue a nonmaterial amendment to a permit pursuant to Regulation Sections 10820 and 10822.

The Commission finds that the projects, as conditioned, provides maximum feasible public access, consistent with the projects (Original Permit as modified by Amendment No. Five).

C. **Live-Aboard Boats.** The Bay Plan policies on Live-Aboard Boats set out four requirements that a marina must meet before the Commission can authorize live-aboards: (a) the number of live-aboard boats cannot generally exceed ten percent of the total berths; (b) the boats would promote recreational boating in the marina by providing a degree of security; (c) the marina would provide, on land, sufficient and conveniently located restrooms, showers, garbage disposal facilities, and adequate parking; and (d) the marina would provide and maintain an adequate number of conveniently located vessel sewage pumpout facilities and receptacles to dispose of waste oil.

The permittee's request for a maximum of 15 live-aboards conforms to the ten percent requirement. The live-aboards are spread throughout the harbor to afford maximum coverage and security. The 15 live-aboards will be located on the following piers: two on Pier A (because of its greater length), and one each on Piers B, E, F, G, H, I, J, K, L, M, N, O, and Q. The permittee states that the exact locations of the live-aboards must be kept confidential to maximize security and deter vandalism of boats throughout the marina. Special Condition II-C requires that a map showing the specific location of each live-aboard be kept on file at the marina harbormaster's office, and be provided upon request to BCDC Commissioners and staff. This condition allows the Commission to inspect the marina for compliance with the live-aboard requirements of this permit. With the exception of the waste oil disposal facility, the marina contains all facilities required under (c) and (d) above: six pairs of restrooms with showers located on the north, west and south dikes, dumpsters are located at the head of each gangway, and two sewage pumpout stations are located immediately adjacent to the fuel dock at the harbor entrance. The marina provides ample public parking with 1,817 non-dedicated spaces. Special Condition II.L. requires maintenance of the restrooms, showers and garbage facilities. Special Condition II.J. requires that the permittee install a waste oil disposal facility prior to using the new berths, and to maintain the waste oil and sewage pumpout facilities in a safe, sanitary and operable manner.

The Commission finds that the berthing of 15 live-aboards at the marina in the manner required by the conditions herein, is consistent with the Commission's policies.

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D. Fill In the Bay. The project involves the placement of fill for new marina berths, tidal culverts, and for rock riprap along the north dike shoreline, the tidal culverts and the Roberts Landing shoreline levees.

1. **Marina Berths.** The marina berths are a water-oriented use for which there is no alternative upland location. The purpose of the fill is to upgrade the marina berths. The existing berths were installed in 1962, and are of wood construction. The berths are starting to deteriorate. The new berths will be concrete and will be both wider and longer than the existing berths to accommodate larger boats. The permittee states that a feasibility report for the project indicated that these berths were in highest demand, and that double finger berths providing access to both sides of the vessels, are desired. Although the square footage of Bay coverage will increase as a result of the larger berths, the number of berths will decrease from 292 to 250, since no expansion of the marina area is contemplated or feasible given the site constraints.

The Commission finds that the placement of 23,666 square feet of additional pile supported and floating fill for the new marina berths is the minimum amount of fill necessary to upgrade the marina, and is consistent with the Commission's fill policies.

2. **Riprap.** The existing slope protection along the 900-foot north dike consists of an irregular thickness of four-inch or smaller bedding material. The remainder of the 3,200-foot-long shoreline of the marina is protected by 12-inch riprap. The amended permit authorizes the placement of 12-inch riprap along the north dike to upgrade the slope protection and to make the shoreline consistent with the rest of the marina.

Because the marina is well protected by dikes, there does not appear to be a wave erosion problem inside the marina. Therefore, the primary purpose of the placement of 12-inch riprap is not to provide shoreline protection, but to improve shoreline appearance by creating a consistent shoreline treatment throughout the marina.

The Commission's regulations require a project to meet certain criteria to qualify as minor fill for improving shoreline appearance (Section 10700). The regulations state that: (a) the fill must be necessary because the present appearance of the shoreline detracts from enjoyment of the Bay and it is infeasible to improve the appearance without filling; (b) the fill must be the minimum necessary; (c) the fill must improve shoreline appearance; and (d) the fill must not adversely affect enjoyment of the Bay. The Design Review Board found that the riprap fill qualified as minor fill to improve shoreline appearance.

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Special Condition II.M.2. requires the permittee to remove the small, four-inch rocks and excavate the slope in preparation for the riprap placement. As a result, the new riprap placement will not involve a net increase in fill. The face of the new riprap will be at the same grade as the existing rock.

The project will also result in the placement of 600 cubic yards of rock riprap over an approximate 420-foot length of shoreline to protect an existing levee at the Bunker Marsh as part of the Shoreline Marshlands Enhancement Project (Water Circulation and Drainage Plan). Because of the existing location of the levee, it is not possible to locate the riprap in an alternative upland location. Further, the riprap has been designed by engineers to be the minimum necessary to protect the levee. Special Condition II.M. ensures that the quality of the riprap material selected will be generally spheroid in shape, free from reinforcing steel and other extraneous materials so that it will improve shoreline appearance.

The Commission finds that the placement of 1,800 cubic yards of riprap in the Bay along the north dike and along the Bunker Marsh Levee qualifies as minor fill to improve shoreline appearance consistent with the Commission's policies and regulations.

Amendment No. Four authorizes the placement of 2,900 square feet (230 cubic yards) of new riprap and approximately 6,555 square feet (1,370 cubic yards) of replacement riprap. This work involves new riprap and repair to existing riprap that is the minimum amount necessary for the needed repairs and covers less than 10,000 square feet as defined in Regulation Section 10601(a), and thus is a "minor repair or improvement" for which the Executive Director may issue: (1) a permit, pursuant to Government Code Section 66632(f) and Regulation Section 10622(a); and (2) an amendment to a permit, pursuant to Regulation Section 10810.

3. **Tidal Culverts.** The Shoreline Marshlands Enhancement Project (Water Circulation and Drainage Plan) requires the placement of 1,270 square feet of fill for tidal culverts and their associated shoreline protection. The purpose of the fill is to restore historic bay marshlands, improving wildlife habitat. The restoration of marshlands is a water-dependent use, as defined by the McAteer-Petris Act, whose purpose could not be served by relocation to an alternative upland location. Further, the project and the size, type and placement of the culverts were developed in consultation with the U.S. Fish and Wildlife Service and the California Department of Fish and Game to provide appropriate tidal action on the inboard sides of the levees for the enhancement of the marsh while minimizing fill in the Bay. Therefore, the Commission finds the authorized tidal culverts are consistent with the McAteer-Petris Act and *San Francisco Bay Plan* policies governing fill.

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E. Dredging. The project, as amended, includes a single maintenance dredging episode of the marina basin totaling 51,000 cubic yards, and 6,700 cubic yards of new dredging along the north and west dikes to accommodate the new marina berths, and 12,130 cubic yards in and adjacent to Roberts Landing Slough for the purpose of enhancing tidal action in the marsh restoration project.

The Bay Plan Policies on Dredging state, in part, that "prior to the authorization of the dredging or the disposal of dredged materials in the Bay, the Commission should assure that adequate testing of the sediments will be done and that the sediments will be dredged and disposed of consistent with the requirements of the Regional Water Quality Control Board (Regional Board) and the Environmental Protection Agency (EPA). The permittee has performed sediment testing required by the Regional Board, and has obtained Water Quality Certification (WQC). The order granting WQC prescribes waste discharge requirements (WDR) for the disposal of the dredged spoils at an upland site, outside the Commission's jurisdiction. In addition, for the Shoreline Marshlands Enhancement Project (Water Circulation and Drainage Plan), the dredged materials will be disposed of at an inland location outside the Commission's jurisdiction consistent with the Commission's policies on alternative dredge disposal sites. The permittee will reuse the dredged materials within the marsh enhancement project to create habitat islands and shore up the existing levees. No disposal of dredged materials within San Francisco Bay is authorized by this amended permit.

The Commission finds that the maintenance and new dredging authorized by this permit are consistent with the Commission's policies on dredging.

F. Surface Mining and Reclamation Act. The Surface Mining and Reclamation Act of 1972, as amended, exempts from coverage all navigational dredging pursuant to 14 California Administrative Code Section 3502 and California Public Resources Code Section 2714A. The project authorized herein, are therefore, exempt from the Surface Mining and Reclamation Act.

G. East Marsh Jurisdiction. There may be the possibility of the Commission's Bay jurisdiction extending into portions of the East Marsh due to occasional overtopping of the East Marsh levee. A jurisdictional determination for the site was made by staff in September of 1992, based on a 1969 survey of the property, entitled: "Jeras Corporation Property for Bissal & Karn, Inc.," dated August 15, 1969, and prepared California Aero Topo, Inc. Since that time, additional information has suggested that the East Marsh has flooded on different occasions, but it is still unclear as to the extent of this flooding and how much of the flooding could have been caused by tidal action. Staff will continue to study all new and relevant information presented to assist in determining whether the Commission's Bay jurisdiction extends into the East Marsh.

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However, because the project involves the enhancement of a diked, tidally muted marsh within an area which was historically a Bay marsh, the Commission would support the project regardless of the jurisdiction. Both the McAteer-Petris Act and the *San Francisco Bay Plan* clearly encourage marsh restoration and wildlife refuge uses in these types of areas. The Commission finds that the project is consistent McAteer-Petris Act and the *San Francisco Bay Plan* policies, and that if it is shown in the future that the East Marsh is part of the Commission's Bay jurisdiction, the issuance of this amended permit does not usurp the Commission's ability to assert that jurisdiction and require future authorization for any additional work in the subject area. Further, the amended permit has been conditioned by Special Condition II.E. to ensure that the East Marsh is managed specifically for wildlife habitat purposes. Therefore, the Commission finds that the amended permit will protect fish and wildlife and marshes and mudflats of San Francisco Bay.

H. **Environmental Review.** The lead agency for the project, the City of San Leandro, certified a mitigated Negative Declaration of environmental impact for the original project on July 17, 1989, and a mitigated Negative Declaration of environmental impact for the Shoreline Marshlands Restoration Project on December 20, 1993.

I. **Enforcement Program and Civil Penalties.** The Commission has an enforcement program that reviews its permits for compliance. The Commission may issue cease and desist and civil penalty orders if violations are discovered. The McAteer-Petris Act provides for the imposition of administrative civil penalties ranging from \$10 to \$2,000 per day up to a maximum of \$30,000 per violation. The Act also provides for the imposition of court-imposed civil penalties of up to \$30,000 in addition to any other penalties, penalties for negligent violations of between \$50 and \$5,000 per day, knowing and intentional penalties of between \$100 and \$10,000 per day, and exemplary penalties, which are supplemental penalties, in an amount necessary to deter future violations. In addition, anyone who places fill, extracts materials, or makes any substantial change in use of any water, land or structure within the area of the Commission's jurisdiction without securing a permit from the Commission is guilty of a misdemeanor (Amendment No. Five).

J. **Conclusion.** For all of the above reasons, the Commission finds that the proposed projects, as conditioned herein, are consistent with the McAteer-Petris Act and the *San Francisco Bay Plan*. The Commission further finds, declares, and certifies that the activities authorized herein are consistent with the Commission's amended management program for the San Francisco Bay, as approved by the Department of Commerce under the Federal Coastal Zone Management Act of 1972, as amended.

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IV. Standard Conditions

~~A. All required permissions from governmental bodies must be obtained before the commencement of work; these bodies include, but are not limited to, the U.S. Army Corps of Engineers, the State Lands Commission, the Regional Water Quality Control Board, and the city and/or county in which the work is to be performed, whenever any of these may be required. This amended permit does not relieve the permittee of any obligations imposed by State or Federal law, either statutory or otherwise.~~

~~B. The attached Notice of Completion and Declaration of Compliance form shall be returned to the Commission within 30 days following completion of the work.~~

~~C. Work must be performed in the precise manner and at the precise locations indicated in your application and amendment requests, as such may have been modified by the terms of the amended permit and any plans approved in writing by or on behalf of the Commission.~~

~~D. Work must be performed in a manner so as to minimize muddying of waters, and if diking is involved, dikes shall be waterproof. If any seepage returns to the Bay, the permittee will be subject to the regulations of the Regional Water Quality Control Board in that region.~~

~~E. The rights, duties, and obligations contained in this amended permit are assignable. When the permittee transfers any interest in any property either on which the authorized activity will occur or which is necessary to the full compliance of one or more conditions to this amended permit, the permittee/transferor and the transferee shall execute and submit to the Commission an amended permit assignment form acceptable to the Executive Director. An assignment shall not be effective until the assignee executes and the Executive Director receives an acknowledgment that the assignee has read and understands the amended permit and agrees to be bound by the terms and conditions of the amended permit, and the assignee is accepted by the Executive Director as being reasonably capable of complying with the terms and conditions of the amended permit.~~

~~F. Unless otherwise provided in this amended permit, all the terms and conditions of this amended permit shall remain effective for so long as the amended permit remains in effect or for so long as any use or construction authorized by this amended permit exists, whichever is longer.~~

~~G. Unless otherwise provided in this amended permit, the terms and conditions of this amended permit shall bind all future owners and future possessors of any legal interest in the land and shall run with the land.~~

~~H. Unless otherwise provided in this amended permit, any work authorized herein shall be completed within the time limits specified in this amended permit, or, if no time limits are specified in the amended permit, within three years. If the work is not completed by the date specified in the amended permit, or, if no date is specified, within three years from the date of~~

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~~the amended permit, the amended permit shall become null and void. If this amended permit becomes null and void for a failure to comply with these time limitations, any fill placed in reliance on this amended permit shall be removed by the permittee or its assignee upon receiving written notification by or on behalf of the Commission to remove the fill.~~

~~I. Except as otherwise noted, violation of any of the terms of this amended permit shall be grounds for revocation. The Commission may revoke any amended permit for such violation after a public hearing held on reasonable notice to the permittee or its assignee if the amended permit has been effectively assigned. If the amended permit is revoked, the Commission may determine, if it deems appropriate, that all or part of any fill or structure placed pursuant to this amended permit shall be removed by the permittee or its assignee if the amended permit has been assigned.~~

~~J. This amended permit shall not take effect unless the permittee executes the original of this amended permit and returns it to the Commission within ten days after the date of the issuance of the amended permit. No work shall be done until the acknowledgment is duly executed and returned to the Commission.~~

~~K. Any area subject to the jurisdiction of the San Francisco Bay Conservation and Development Commission under either the McAteer-Petris Act or the Suisun Marsh Preservation Act at the time the permit is granted or thereafter shall remain subject to that jurisdiction notwithstanding the placement of any fill or the implementation of any substantial change in use authorized by this amended permit.~~

~~L. Any area not subject to the jurisdiction of the San Francisco Bay Conservation and Development Commission that becomes, as a result of any work or project authorized in this amended permit, subject to tidal action shall become subject to the Commission's "bay" jurisdiction.~~

~~M. Unless the Commission directs otherwise, this amended permit shall become null and void if any term, standard condition, or special condition of this amended permit shall be found illegal or unenforceable through the application of statute, administrative ruling, or court determination. If this amended permit becomes null and void, any fill or structures placed in reliance on this amended permit shall be subject to removal by the permittee or its assignee if the amended permit has been assigned to the extent that the Commission determines that such removal is appropriate. Any uses authorized shall be terminated to the extent that the Commission determines that such uses should be terminated.~~

A. **Permit Execution.** This amended permit shall not take effect unless the permittee(s) execute the original of this amended permit and return it to the Commission within ten days after the date of the issuance of the amended permit. No work shall be done until the acknowledgment is duly executed and returned to the Commission.

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B. Notice of Completion. The attached Notice of Completion and Declaration of Compliance form shall be returned to the Commission within 30 days following completion of the work.

C. Permit Assignment. The rights, duties, and obligations contained in this amended permit are assignable. When the permittee(s) transfer any interest in any property either on which the activity is authorized to occur or which is necessary to achieve full compliance of one or more conditions to this amended permit, the permittee(s)/transferors and the transferees shall execute and submit to the Commission a permit assignment form acceptable to the Executive Director. An assignment shall not be effective until the assignees execute and the Executive Director receives an acknowledgment that the assignees have read and understand the amended permit and agree to be bound by the terms and conditions of the amended permit, and the assignees are accepted by the Executive Director as being reasonably capable of complying with the terms and conditions of the amended permit.

D. Permit Runs With the Land. Unless otherwise provided in this amended permit, the terms and conditions of this amended permit shall bind all future owners and future possessors of any legal interest in the land and shall run with the land.

E. Other Government Approvals. All required permissions from governmental bodies must be obtained before the commencement of work; these bodies include, but are not limited to, the U. S. Army Corps of Engineers, the State Lands Commission, the Regional Water Quality Control Board, and the city or county in which the work is to be performed, whenever any of these may be required. This amended permit does not relieve the permittee(s) of any obligations imposed by State or Federal law, either statutory or otherwise.

F. Built Project Must Be Consistent with Application. Work must be performed in the precise manner and at the precise locations indicated in your application, as such may have been modified by the terms of the amended permit and any plans approved in writing by or on behalf of the Commission.

G. Life of Authorization. Unless otherwise provided in this amended permit, all the terms and conditions of this amended permit shall remain effective for so long as the amended permit remains in effect or for so long as any use or construction authorized by this amended permit exists, whichever is longer.

H. Commission Jurisdiction. Any area subject to the jurisdiction of the San Francisco Bay Conservation and Development Commission under either the McAteer-Petris Act or the Suisun Marsh Preservation Act at the time the amended permit is granted or thereafter shall remain subject to that jurisdiction notwithstanding the placement of any fill or the implementation of any substantial change in use authorized by this amended permit. Any area not subject to the

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jurisdiction of the San Francisco Bay Conservation and Development Commission that becomes, as a result of any work or project authorized in this amended permit, subject to tidal action shall become subject to the Commission's "bay" jurisdiction.

I. **Changes to the Commission's Jurisdiction as a Result of Natural Processes.** This amended permit reflects the location of the shoreline of San Francisco Bay when the amended permit was issued. Over time, erosion, avulsion, accretion, subsidence, relative sea level change, and other factors may change the location of the shoreline, which may, in turn, change the extent of the Commission's regulatory jurisdiction. Therefore, the issuance of this amended permit does not guarantee that the Commission's jurisdiction will not change in the future.

J. **Violation of Permit May Lead to Permit Revocation.** Except as otherwise noted, violation of any of the terms of this amended permit shall be grounds for revocation. The Commission may revoke any amended permit for such violation after a public hearing held on reasonable notice to the permittee(s) or their assignees if the amended permit has been effectively assigned. If the amended permit is revoked, the Commission may determine, if it deems appropriate, that all or part of any fill or structure placed pursuant to this amended permit shall be removed by the permittee(s) or their assignees if the amended permit has been assigned.

K. **Should Permit Conditions Be Found to be Illegal or Unenforceable.** Unless the Commission directs otherwise, this amended permit shall become null and void if any term, standard condition, or special condition of this amended permit shall be found illegal or unenforceable through the application of statute, administrative ruling, or court determination. If this amended permit becomes null and void, any fill or structures placed in reliance on this amended permit shall be subject to removal by the amended permittee(s) or their assignees if the amended permit has been assigned to the extent that the Commission determines that such removal is appropriate. Any uses authorized shall be terminated to the extent that the Commission determines that such uses should be terminated.

L. **Permission to Conduct Site Visit.** The permittee(s) shall grant permission to any member of the Commission's staff to conduct a site visit at the subject property during and after construction to verify that the project is being and has been constructed in compliance with the authorization and conditions contained herein. Site visits may occur during business hours without prior notice and after business hours with 24-hour notice.

M. **Abandonment.** If, at any time, the Commission determines that the improvements in the Bay authorized herein have been abandoned for a period of two years or more, or have deteriorated to the point that public health, safety or welfare is adversely affected, the Commission may require that the improvements be removed by the permittee(s), its assignees or successors in interest, or by the owner of the improvements, within 60 days or such other reasonable time as the Commission may direct.

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SAN FRANCISCO BAY CONSERVATION
& DEVELOPMENT COMMISSION

N. Best Management Practices

1. **Debris Removal.** All construction debris shall be removed to an authorized location outside the jurisdiction of the Commission. In the event that any such material is placed in any area within the Commission's jurisdiction, the permittee(s), its assignees, or successors in interest, or the owner of the improvements, shall remove such material, at their expense, within ten days after they have been notified by the Executive Director of such placement.
2. **Construction Operations.** All construction operations shall be performed to prevent construction materials from falling, washing or blowing into the Bay. In the event that such material escapes or is placed in an area subject to tidal action of the Bay, the permittee(s) shall immediately retrieve and remove such material at its expense.

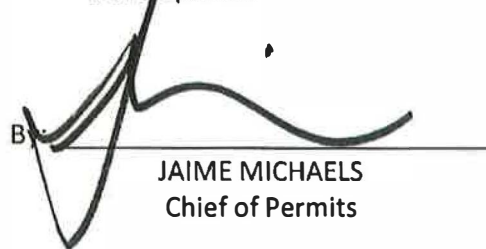
O. In-Kind Repairs and Maintenance. Any in-kind repair and maintenance work authorized herein shall not result in an enlargement of the authorized structural footprint and shall only involve construction materials approved for use in San Francisco Bay. Work shall occur during periods designated to avoid impacts to fish and wildlife. The permittee(s) shall contact Commission staff to confirm current restricted periods for construction.

Executed at San Francisco, California, on behalf of the San Francisco Bay Conservation and Development Commission on the date first above written.

LAWRENCE J. GOLDZBAND

Executive Director

San Francisco Bay Conservation and
Development Commission



JAIME MICHAELS
Chief of Permits

JM/MSW/GO

cc: U. S. Army Corps of Engineers, Attn.: Regulatory Functions Branch
San Francisco Bay Regional Water Quality Control Board,
Attn.: Certification Section
Environmental Protection Agency
East Bay Regional Park, Attn: Martin Vitz

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* * * * *

Receipt acknowledged, contents understood and agreed to:

Executed at 835 E. 14TH St., San Leandro
CA 94577

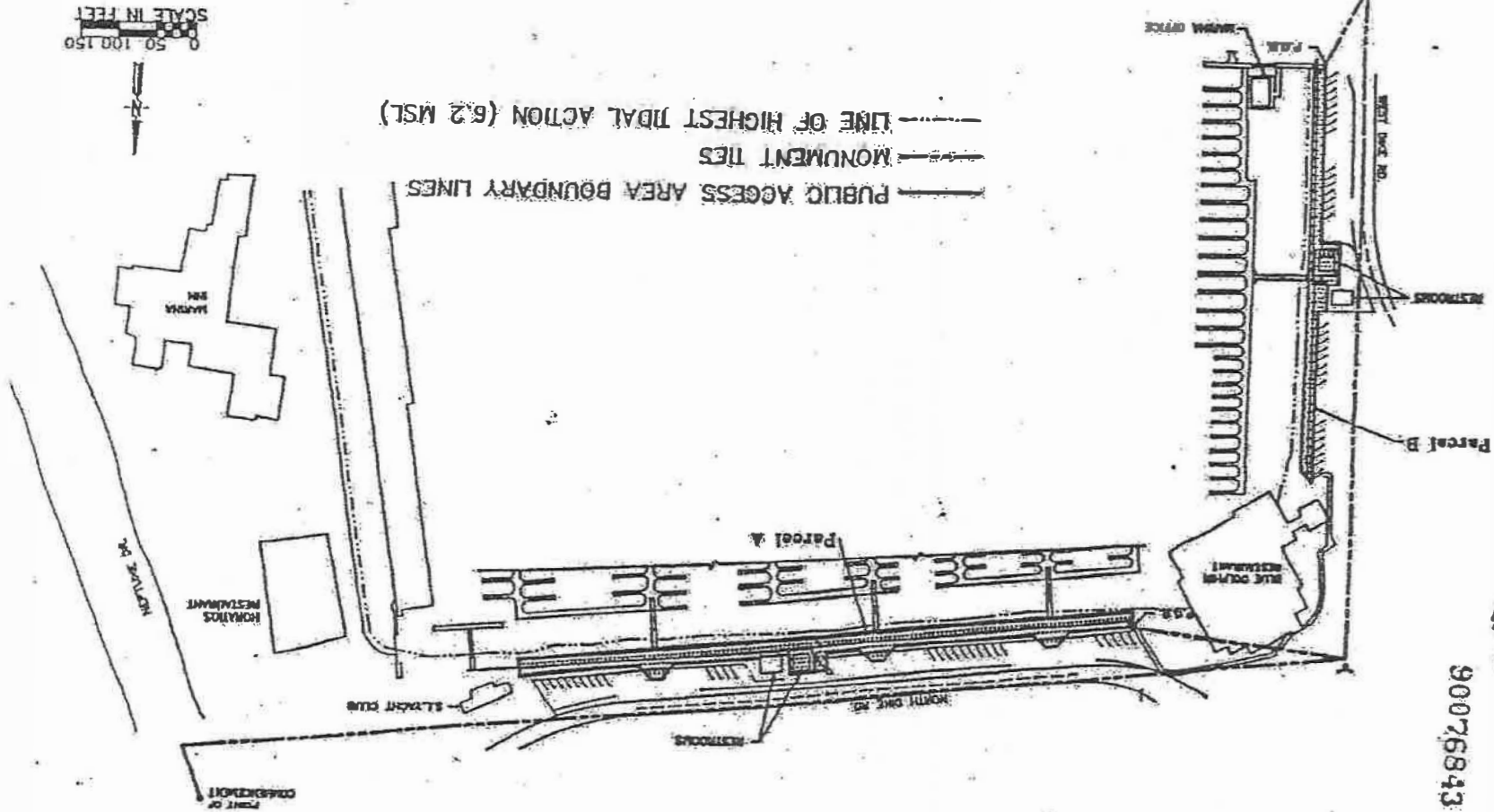
On May 9, 2016 By:

City of San Leandro
Applicant

Keith R. Cooke
Keith R. Cooke, Director
Print Name and Title

SAN LEANDRO MARINA REQUIRED PUBLIC ACCESS AREA

90076843



City of San Leandro, Community Development Department, February 23, 1990

EXHIBIT A

BCDC Permit 14-89